

APPENDIX I.

LEGISLATIVE HISTORY OF THE SUITS AGAINST
UNITED STATES IN ADMIRALTY ACT.

I. There are three drafts of the Suits Against the United States In Admiralty Act, the second and third drafts being almost absolutely the same, with merely the slightest of changes between them, and the third draft being the present Suits In Admiralty Act as passed by the Senate and the House of Representatives without any change whatsoever.

Essentially all these drafts are the same, and the apparent differences exist chiefly between the first and second drafts. But these differences are more apparent than real, because while sentences have been shifted around from one section to another between the first two drafts, each one has practically the same content.

For instance, Section 2 of the second draft, which is practically unchanged in its form in the present law, is composed of two sentences taken from Section 1 of the first draft and of a sentence taken from Section 7 of the first draft, together with a further sentence added to give more clarification.

Section 3 of the second draft represents a similar shifting around. The first three sentences are a condensation of matter contained in Section 1 of the original draft. The fifth and sixth sentences have been taken from Section 2 of the first draft, and the last sentence represents the entire Section 4 of the first draft.

In the same way, Section 4 of the second draft is Section 5 of the first draft almost verbatim.

Section 6 of the second draft is Section 3 of the first draft with no important verbal changes.

II. Bearing this in mind, it will, therefore, be helpful to ascertain what the purpose was behind the first draft.

III. The Act was drawn up in the summer of 1919 by Mr. Ira A. Campbell, then Special Assistant to the Attorney General and in charge of admiralty litigation. He had previously been Admiralty Counsel of the United States Shipping Board from May 1, 1918, before he became Assistant to the Attorney General. As a result of his practical experience in these positions he drafted H. R. 7124.

At the Hearing Before the Committee on the Judiciary, House of Representatives, Sixty-sixth Congress, First Session, held August 26, 1919, he testified, according to the official report, as follows:

Pages 11-12. "Mr. Campbell. I will now read the bill, H. R. 7124:

'A BILL authorizing suits against the United States in admiralty, for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States, and any corporation in which the United States owns not less than a majority of the capital stock,

may be sued in personam in the district courts of the United States in admiralty for any cause of action of which said courts ordinarily have cognizance in their admiralty and maritime jurisdictions——'

"Mr. Steele. What was your idea in using the word 'ordinarily' within the jurisdiction? Would it not be clearer if you left the word 'ordinarily' out?"

Mr. Campbell. I will tell you why I used it. What I am trying to do is to place the Government in the same position in suits in the admiralty courts as the private owner is. I put that word in there to try to express and convey that particular intention. * * *

I will continue reading:

'arising since April 6, 1917, out of or in connection with the possession, operation, or ownership by the United States or such corporation of any merchant vessel, or the possession, carriage, or ownership by the United States or such corporation of any cargo in those cases where, if the United States were suable as private party, a suit in personam could be maintained, or where, if the vessel or cargo were privately owned and possessed, a libel in rem could be maintained and the vessel or cargo could be arrested or attached at the time of the commencement of suit.'

In brief, that means the United States could be sued in personam in any case arising out of the carriage, etc., of cargoes by Shipping Board vessels, where a private citizen could be sued."

IV. Section 1, therefore, specifically says that a pure suit *in personam* can be maintained: "The United States * * * may be sued *in personam* * * * in those cases

where, if the United States were suable as a private party, a suit *in personam* could be maintained * * *."

This was the intention of the draftsman and the clear understanding of the Committee on the Judiciary, as shown by the following statements from the official report:

Page 14. "Mr. Webb. Does this section take away the right of bringing an action *in rem*?

Mr. Campbell. No, sir; in the next section I cover that. This first section gives the right of action *in to personam*.

Mr. Webb. That is the only change in existing law that this section makes?

Mr. Campbell. I could not say absolutely that there is no change in existing law, because the only law we have on the subject to-day is that grounded upon Section 9 of the Shipping Board Act, as interpreted from the Supreme Court decision in the *Lake Monroe* case. That says nothing about liability with respect to ownership and carriage of cargoes and the like of that. This does. But the situation is simply this, that the Government has been and is now engaged in commercial pursuits with vessels. It is carrying cargoes for everyone who applies, and there is no reason why the Government, in the operation of this commercial fleet in commercial trades, should not be subject to the same liabilities as the private owner who engages in that business."

V. Section 1 having covered suits purely *in personam*, Section 2 was intended to cover suits nominally *in personam* but proceeding according to the principles of suits *in rem*. This again appears clearly from the testimony at the official hearing:

Page 16. " 'Sec. 2. That no suit in rem shall be brought against nor any warrant of arrest or attachment levied upon any vessel owned or operated by or demised to or in the possession of the United States or such aforesaid corporation, nor against nor upon any cargo owned or/and in the possession of the United States or such corporation, but any suit brought hereunder shall, if the libelant so elects in his libel, proceed in accordance with the principles of suits in rem in all cases wherein maritime liens exist and where, if the vessel or cargo with respect to which the action arises were privately owned and possessed, a libel [suit] in rem could be maintained and the vessel or cargo arrested or attached at the time of the commencement of suit; but election to proceed as aforesaid as in rem shall not preclude the libelant in a proper case from also seeking relief in personam in the same suit.'

Mr. Webb. You read 'suit' in line 15.

Mr. Campbell. 'Libel' should be changed to 'suit'. That is a slip on my part. Use the word 'suit' throughout.

Let me explain that section. It first provides that no suit in rem shall be brought nor any vessel of the United States, and that any cargo owned and in possession of the United States, shall not be libeled or attached, but any suit brought under this bill, and that is a suit authorized by the first section, suits in personam—

'shall, if the libelant so elects, proceed in accordance with the principles of suits in rem, in all cases where maritime liens exist, and where, if the vessel or cargo with respect to which the action arises were privately owned and possessed, a suit in rem could be maintained and the vessel or cargo arrested or attached at the time of the commencement of suit.'

That it contemplates meeting this situation. There are cases where a libelant acquires a different right in rem than in personam. I think I can state the law, if my friends will correct me. I believe the law is that if a vessel is in collision while her navigation is under the control of a compulsory pilot, she is liable in rem, but that you could not hold the owner liable for an action in personam. Now, there may be cases, I can not state them to you at the moment, where a different ranking of liens may be given in actions in rem than in actions in personam."

VI. As a corollary of the liability intended to be imposed upon the United States according to this draft, both *in personam* and *in rem*, which liability was intended to be co-extensive with that of any private owner, the United States was then granted the benefits of all limitations of liability accorded by law to private persons.

Page 17. "Mr. Campbell. * * * I will read Section 3.

'Sec. 3. That the United States and such aforesaid corporation shall be entitled to the benefits of all exemption from and all limitations of liability accorded by the statutes of the United States and of the several States and Territories and by the maritime law to the owners, charterers, operators, and agents of vessels.'

In other words, I confer expressly upon the Government all the rights which private owners have with respect to the limitation of their liabilities, the plan being, or the attempt being, to place the Government in the same position as a private owner."

VII. The purpose of the draftsman was to cover all causes of action cognizable in admiralty. (*Italics ours.*)

Page 46. "Mr. Webb. Mr. Campbell, what is the result in this bill of the United States being sued directly?

Mr. Campbell. What is the result?

Mr. Webb. Yes; in what cases would suit be brought against the United States, by name, instead of the corporation?

Mr. Campbell. *In all cases of tort and contract arising out of possession, ownership, or operation of any ship, any merchant vessel, as the bill now reads, possession or ownership.*

Mr. Webb. You would sue the United States?

Mr. Campbell. Yes, sir."

In a word, as Mr. Campbell said, and substantially this statement was repeated again and again by the proponents of the bill on the floor of Congress:

Page 14. " * * * the Government has been and is now engaged in commercial pursuits with vessels. It is carrying cargoes for everyone who applies, and there is no reason why the Government, in the operation of this commercial fleet in commercial trades, should not be subject to the same liabilities as the private owner who engages in that business."

For the convenience of the Court we have set forth hereinafter all the relevant extracts from the Congressional Record which, in our opinion, throw light upon the passage of the bill and serve to show what the real intent of Congress was. We have also given as Appendix II the first seven sections of the first draft and the first six sections of

the second draft, which contain all the provisions which throw any light upon the question of pure suits *in personam*.

The conference report on the bill S. 3076, which is referred to in the extract from the Congressional Record of February 28, 1920, is not given, because the report of the conference contains nothing except the third draft of the Act, which was passed by the Senate and the House of Representatives without alteration, and which is, therefore, exactly the same as the first six sections of the present Act, which we have printed in full as Appendix III.

The principal debate upon the bill was held in the House of Representatives, where the bill was sponsored by Mr. Volstead and supported by Mr. Husted and Mr. Walsh.

On January 17, 1920, Mr. Volstead, in introducing the bill, spoke as follows (Congressional Record, Vol. 59, Part 2, page 1680):

“Sec. 9 of the Shipping Act made the Government of the United States liable for marine torts. Simple justice required that if the Government entered upon the business of carrying freight we ought to make the Government stand in practically the position of a private individual as to liability, so that those who might be injured by its operation could have a remedy. Under the old law the Government could not be sued. * * *

It was recognized in Congress that the Act by its broad terms went well beyond the provisions of Section 9 of the Shipping Act of 1916 and also well beyond the doctrine of the “*Lake Monroe*”, 250 U. S. 246.

Pages 1685-1686. January 17, 1920:

“Mr. Oliver. If the gentleman's amendment is adopted by the House it will give a right of action in many cases against the Government where that right does not now exist?

Mr. Husted. Oh, yes; in very many cases.

Mr. Oliver. I wish to call attention to that, because in replying to the question propounded by the gentleman from Illinois (Mr. Madden), the gentleman's answer did not convey that idea. This bill carries forward the right to sue the Government much further than the *Lake Monroe* case does.

Mr. Husted. Oh, very much. The *Lake Monroe* case was solely confined to merchant vessels and the merchant service.

Mr. Whaley. And under charter.

Mr. Husted. And under charter.

Mr. Whaley. They had to be under charter. If they were in ballast the action would not lie.

Mr. Husted. My amendment creates a right of action against the vessels of the United States under these four important limitations.

Mr. Oliver. In other words, it gives a right of action against the Government for any act of negligence in the performance of a governmental function.

Mr. Husted. Not any act of negligence, but any act of negligence in the operation of vessels upon the high seas.

Mr. Oliver. Yes.

Mr. Husted. Or upon inland waters, where they meet on equal terms citizens of the United States engaged in private shipping.”

By both Mr. Volstead, Mr. Husted and Mr. Walsh it was stated that the reason for passing the Act was that where the Government managed and operated vessels which it

controlled, as a business enterprise, it ought to go upon the same footing as a private individual and a private corporation, and since the Government was in competition with privately owned vessels, it ought to be put upon the same footing with them.

“Mr. Husted. My amendment is based in reason upon the common justice of granting relief to the citizens of the United States who have been injured through the negligence or incompetent operation of public vessels of the Government of the United States.

I do not think I can do better, in the discussion of the question of the moral responsibility of the Government in these cases, than to quote from a very able brief of Senator Hoar, of Massachusetts, who was chairman of a committee that investigated this question. This report of Senator Hoar has been commented upon favorably in a number of cases in the Court of Claims.

“ ‘The Committee think that the Government of the United States is not liable for loss or damage occasioned to private citizens by reason of any imperfection in the performance of the ordinary functions of government or by reason of the acts, omissions, or negligence of its officers or agents in the discharge of such functions. * * *

“ ‘But we are of the opinion that there are two classes of cases where sound public policy requires the United States and all other sovereign Governments to hold themselves responsible for injuries occasioned by the negligence of their agents. One is where the Government, through its agents, manages or controls property from which it receives a benefit or profit. * * *

“ ‘Another class of cases where this responsi-

bility is recognized is where the Government is using or managing property through its agents under circumstances where these agents mingle on terms of equality with the general mass of citizens, and where the security of the citizens requires that the same obligation shall rest upon them, and that it shall be enforced by similar responsibility, as in the case of private persons.' "

Page 1687. "Mr. Walsh [*in supporting the bill*].—* * * with respect to merchant ships we have said in the shipping act, and we say by this bill, that the Government is operating vessels which it owns or controls as a business enterprise, and when the Government goes into that business enterprise it ought to go upon the same footing as a private individual or a private corporation, and it ought to be subject to the same liabilities for any act of Government officials in carrying out that particular business enterprise. In carrying on the operation of these ships we are operating them in commerce, in competition with privately owned vessels and ships, and we ought to be put upon the same footing as those others; * * *."

At no spot in the hearings nor in the committee or conference reports, nor in the Congressional Record, is it suggested that the Act is intended to include only causes of action which are purely *in rem*.

Likewise at no spot in the entire legislative history of this bill was it ever suggested that the Act was intended to exclude causes of action which were purely *in personam*.

On the contrary it appears both in the hearings and in the debates in Congress that it was the intention of Congress to impose upon the Government a new liability exactly the same as that of any private shipowner. This was plainly expressed in the original draft of the Act, and the subsequent drafts depart from the first draft only by attaining greater conciseness.

For instance, where the first draft says that the United States may be sued *in personam* "in those cases where, if the United States were suable as a private party, a suit in personam could be maintained, or where, if the vessel or cargo were privately owned and possessed, a libel in rem could be maintained and the vessel or cargo could be arrested or attached at the time of the commencement of suit," the final form briefly says "that in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained, * * * a libel in personam may be brought against the United States."

This greater generality cannot fairly be said to be narrower than the earlier specific enumeration.

Nevertheless this idea of actions *in personam* as well as actions *in rem* persists all through the Act, although it was made more general at that spot. For instance, at the end of Section 2 as it exists at present, it is provided that the United States may file "a libel in rem or in personam in any district" and that thereupon "a cross libel in personam may be filed" against the United States.

It has been mentioned above that Section 5 of the first draft is in all material respects the same as Section 4 of the present Act.

Section 5 originally read: (our italics) "that in the event of any privately owned vessel, out of the possession of the United States, being arrested in any suit *in rem* or attached in any suit *in personam*", etc. As the words "arrest" and "attach" have a technical meaning in admiralty procedure, this passage was condensed and reads in the present law: "that if a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached", etc. The present form still preserves by this antithesis the original contrast of an action *in personam* or *in rem*.

In the same way the provision which is today found in Section 3, namely "If the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels *in rem* wherever it shall appear that had the vessel or cargo been privately owned and possessed, a libel *in rem* might have been maintained," was taken quite exactly from Section 2 of the first draft, which read as follows:

"Any suit brought hereunder shall, if the libelant so elects in his libel, proceed in accordance with the principles of suits *in rem* in all cases where maritime liens exist and where, if the vessel or cargo with respect of which the action arises were privately owned and possessed, a libel [suit] *in rem* could be maintained * * *."

If suits can be brought against the Government only in accordance with the principles of suits *in rem*, this provision for an election of the libellant becomes quite meaningless.

It can have a meaning only if the libellant may proceed purely *in personam*.

We submit that the entire history of the Act as well as its literal wording shows that it was intended that a libellant could bring a pure *in personam* suit in admiralty against the United States.

APPENDIX II.

*From The Congressional Record, Vol. 59, Part 2,
pp. 1678-1679. Jan. 17, 1920.*

SUITS AGAINST THE UNITED STATES FOR
MARITIME TORTS.

Mr. Volstead. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the bill (S. 3076) authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes. • • •

The Clerk read the bill, as follows:

“BE IT ENACTED, etc. That the United States, and any corporation in which the United States owns not less than a majority of the capital stock, may be sued in personam in the district courts of the United States, in admiralty, for any cause of action of which said courts ordinarily have cognizance in their admiralty and maritime jurisdictions, arising since April 6, 1917, out of or in connection with the possession, operation, or ownership by the United States, or such corporation, of any merchant vessel, or the possession, carriage, or ownership by the United States, or such corporation, of any cargo, in those cases where, if the United States were suable as a private party, a suit in personam could be maintained, or where, if the vessel or cargo were pri-

vately owned or possessed, a suit in rem could be maintained and the vessel or cargo could be arrested or attached at the time of the commencement of suit. Any such suit shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found, or in the district in or nearest which the cause of action arises, or in any district in which the Attorney General or other duly authorized law officer may agree to appear. In case the United State, or such corporation, shall file a libel in rem, or in personam, in any district, a cross libel in personam may be filed, or a set off claimed against the United States, or such corporation, with the same force and effect as if the libel had been filed by a private party. Such district court is hereby authorized to hear and determine any such suit upon the principles of liability and in accordance with the practice obtaining in like cases between private parties in suits in admiralty, and, in a proper case, to enter a decree for or against the United States, or such corporation, with costs, and if for a money judgment, together with interest at the rate of 4 per cent per annum until paid, unless the suit involves a contract stipulating a higher rate of interest, in which event interest shall be allowed in accordance with the contract, and all interest shall run as ordered by the court. Appeal from the decree of the district court in any case brought under this act shall lie to the circuit court of appeals and to the Supreme Court, and the decision of the circuit court of appeals shall be reviewable by the Supreme Court, as now provided in other cases of admiralty and maritime jurisdiction.

Sec. 2. That no suit in rem shall be brought against, nor any warrant of arrest or attachment levied upon, any vessel owned or operated by, or demised to, or in the possession of the United States, or such aforesaid corporation, nor against nor upon any cargo owned and in the possession of the United States, or of such corporation, but any suit brought hereunder shall, if the libelant so elects in his libel, proceed in accordance with the principles of suits in rem in all cases wherein maritime liens exist and where, if the vessel or cargo with respect to which the action arises were privately owned and possessed, a suit in rem could be maintained and the vessel or cargo arrested or attached at the time of the commencement of suit; but election to proceed as aforesaid as in rem shall not preclude the libelant in a proper case from also seeking relief in personam in the same suit.

Sec. 3. That the United States and such aforesaid corporation shall be entitled to the benefits of all exemptions from, and all limitations of, liability accorded by the statutes of the United States and of the several States and Territories, and by the maritime law, to the owners, charterers, operators and agents of vessels.

Sec. 4. That neither the United States nor such aforesaid corporation shall be required to give any bond or admiralty stipulation in any suit brought hereunder, either in the court of original jurisdiction or in any appellate court.

Sec. 5. That in the event of any privately owned vessel out of the possession of the United States being arrested in any suit in rem or attached in any suit in personam, such vessel shall be immediately released without bond or stipulation being required

therefor upon the United States, through the Attorney General, or any other officer duly authorized by him intervening and assuming responsibility for all liability arising in such suit, and upon such intervention said cause shall proceed against the United States in accordance with the provisions of section 2.

Sec. 6. That jurisdiction be, and hereby is, conferred upon the several courts of the United States for the purposes herein specified.

Sec. 7. That in any suit brought hereunder, the libelant shall file his libel, duly verified, with the clerk of the district court having jurisdiction of the cause, and shall forthwith serve a copy thereof on the United States attorney for such district, and mail a copy thereof, by registered mail, to the Attorney General of the United States, and shall file with the clerk of said district court an affidavit of such service and mailing. Such service and mailing shall constitute a valid service on the United States. * * *

The following committee amendment was read:

Strike out all after the enacting clause and insert the following:

‘That every vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock, or in the possession of the United States or of such corporation, or operated by or for the United States or such corporation, is hereby declared to be a public vessel of the United States and to be immune from arrest or seizure. Any cargo owned and possessed by the United States or by such corporation is hereby declared to be public property of the United States and to be immune from arrest or seizure.

‘Sec. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained, a libel in personam may be brought against the United States or against any such corporation, as the case may be, provided that such vessel is employed or intended to be employed in the carriage of cargoes or of passengers for hire. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party: PROVIDED, That upon application of either party the cause may, in its discretion, be transferred to any other district court of the United States, or to any such court upon which they may agree.

‘Sec. 3. That such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree

against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per cent per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder.

‘Sec. 4. That if a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen out of the previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States, through its Attorney General or other duly authorized law officer, that it is interested in such cause, desires such release, and assumes the liability for the satisfaction of any decree obtained by the libelant in such cause, and thereafter such cause shall proceed against the

United States in accordance with the provisions of this act.

'Sec. 5. That suits as herein authorized may be brought on causes of action arising since June 6, 1917 provided that suits based on causes of action arising prior to the approval of this act shall be brought within one year after the approval of this act; and all other suits hereunder shall be brought within two years after the cause of action arises.

'Sec. 6. That the United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.' ''

FROM THE CONGRESSIONAL RECORD, Vol. 59, Part 4, page 3629, February 28, 1920.

SUITS AGAINST THE UNITED STATES IN ADMIRALTY (S. Doc. No. 233)—Conference Report.

Mr. Volstead. Mr. Speaker, I call up the conference report upon the bill (S. 3076), authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes, and I ask unanimous consent that the statement be read in lieu of the report.

The Speaker. The gentleman from Minnesota calls up the conference report on the bill S. 3076 and asks unanimous consent that the statement be read in lieu of the report. Is there objection?

Mr. Gard. Reserving the right to object, has there been a full agreement in this matter?

Mr. Volstead. Yes; there is a full agreement *and it is substantially as it was passed by the House*, with some slight changes. [Italics ours.]

The Speaker. Is there objection?

There was no objection.

The Clerk read the statement of conferees.

[The Conference report presented the *third* draft, which was passed without change and is the present Act, given in Appendix III. The Act, therefore, is substantially the same as the *second* draft.]

APPENDIX III.

SUITS AGAINST THE UNITED STATES IN ADMIRALTY, ETC.

No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this Act shall not apply to the Panama Railroad Company (Sec. 1).

In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall

constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States (Sec. 2).

Such suits shall proceed and shall be heard and determined according to principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction. If the libellant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libellant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder. Any such bond or stipulation heretofore given in admiralty causes by the United States, the United States Shipping Board, or the United States Shipping Board Emergency Fleet Corporation, shall

become void and be surrendered and cancelled upon the filing of a suggestion by the Attorney General or other duly authorized law officer that the United States is interested in such cause, and assumes liability to satisfy any decree included within said bond or stipulation, and thereafter any such decree shall be paid as provided in section 8 of this Act (Sec. 3).

If a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen from previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States, through its Attorney General or other duly authorized law officer, that it is interested in such cause, desires such release, and assumes the liability for the satisfaction of any decree obtained by the libellant in such cause, and thereafter such cause shall proceed against the United States in accordance with the provisions of this Act (Sec. 4).

Suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises (Sec. 5).

The United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels (Sec. 6).

Act of March 9, 1920, ch. 95, 41 Stat. L. 525.

APPENDIX IV.

ACT OF MARCH 3, 1899; 30 STAT. L. 1152.

SEC. 15. (OBSTRUCTION OF NAVIGATION BY ANCHORED OR SUNKEN VESSELS, FLOATING LOGS, ETC.—SUNKEN VESSELS TO BE MARKED AND REMOVED.) That it shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as hereinafter provided for.

SEC. 16. (PENALTIES FOR VIOLATION OF ACT.) That every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five

hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. And any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat or vessel loaded with any material specified in section thirteen of this Act to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of War, or who shall willfully injure or destroy any work of the United States contemplated in section fourteen of this Act, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section fifteen of this Act, shall be deemed guilty of a violation of this Act, and shall upon conviction be punished as hereinbefore provided in this section, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. And any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be liable for the pecuniary penalties specified in this section, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof (30 Stat. L. 1153).

SEC. 17. (PROCEEDINGS FOR VIOLATIONS OF ACT.)

That the Department of Justice shall conduct the legal proceedings necessary to enforce the foregoing provisions of sections nine to sixteen, inclusive, of this Act; and it shall be the duty of district attorneys of the United States to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of War or by any of the officials hereinafter designated, and it shall furthermore be the duty of said district attorneys to report to the Attorney-General of the United States the action taken by him against offenders so reported and a transcript of such reports shall be transmitted to the Secretary of War by the Attorney-General; and for the better enforcement of the said provisions and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of War, and the United States collectors of customs and other revenue officers, shall have power and authority to swear out process and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by the aforesaid sections of this Act, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials: *And provided further*, That whenever any arrest is made under the provisions of this Act, the person so arrested shall be brought forthwith before a commissioner, judge or court of the United States for examination of the offenses alleged against him; and

such commissioner, judge or court shall proceed in respect thereto as authorized by law in case of crimes against the United States (30 Stat. L. 1153).

SEC. 19. (REMOVAL OF SUNKEN VESSELS, ETC.—ADVERTISE-
MENT, PROPOSALS, AND CONTRACT—PROCEEDS.) That when-
ever the navigation of any river, lake, harbor, sound, bay,
canal, or other navigable waters of the United States shall
be obstructed or endangered by any sunken vessel, boat,
water craft, raft, or other similar obstruction, and such
obstruction has existed for a longer period than thirty days,
or whenever the abandonment of such obstruction can be
legally established in a less space of time, the sunken vessel,
boat, water craft, raft, or other obstruction shall be sub-
ject to be broken up, removed, sold, or otherwise disposed
of by the Secretary of War at his discretion, without lia-
bility for any damage to the owners of the same: *Provided*,
That in his discretion, the Secretary of War may cause
reasonable notice of such obstruction of not less than thirty
days, unless the legal abandonment of the obstruction can
be established in a less time, to be given by publication,
addressed “to whom it may concern,” in a newspaper pub-
lished nearest to the locality of the obstruction, requiring
the removal thereof: *And provided also*, That the Secre-
tary of War may, in his discretion, at or after the time
of giving such notice, cause sealed proposals to be solicited
by public advertisement, giving reasonable notice of not
less than ten days, for the removal of such obstruction as
soon as possible after the expiration of the above specified
thirty days’ notice, in case it has not in the meantime been
so removed, these proposals and contracts, at his discre-
tion, to be conditioned that such vessel, boat, water craft,

raft, or other obstruction, and all cargo and property contained therein, shall become the property of the contractor, and the contract shall be awarded to the bidder making the proposition most advantageous to the United States: *Provided*, That such bidder shall give satisfactory security to execute the work: *Provided further*, That any money received from the sale of any such work, or from any contractor for the removal of the wrecks, under this paragraph shall be covered into the Treasury of the United States (30 Stat. L. 1154).

SEC. 20. (REMOVAL OF SUNKEN OR GROUNDING VESSELS, ETC., IN EMERGENCY CASES—EXPENSES—SALE—PROCEEDS.) That under emergency, in the case of any vessel, boat, water craft, or raft, or other similar obstruction, sinking or grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in section nineteen, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of War, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of War or any such agent shall have the right to take immediate possession of such boat, vessel or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal lock, or navigable waters aforesaid of the obstruction thereby caused, using his best judgment to prevent any unnecessary injury; and no one shall interfere with or prevent such removal or destruction: *Provided*, That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it: *And pro-*

vided further, That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States.

Such sum of money as may be necessary to execute this section and the preceding section of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be paid out on the requisition of the Secretary of War.

That all laws or parts of laws inconsistent with the foregoing sections nine to twenty inclusive, of this Act are hereby repealed: *Provided*, That no action begun or right of action accrued prior to the passage of this Act shall be affected by this repeal: *Provided further*, That nothing contained in the said foregoing sections shall be construed as repealing, modifying, or in any manner affecting the provisions of an Act of Congress approved June twenty-ninth, eighteen hundred and eighty-eight, entitled "An Act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City, by dumping or otherwise, and to punish and prevent such offenses," as amended by section three of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four. (30 Stat. L. 1154, as amended by 31 Stat. L. 32, 32 Stat. L. 375.)

APPENDIX V.

ADMIRALTY RULES OF PRACTICE.

PROCESS ON FILING LIBEL.

1.

No mesne process shall issue from the district court in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall have been filed in the clerk's office from which such process is to issue. All process shall be served by the marshal or by his deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the court.

2.

SUITS IN PERSONAM—PROCESS IN—ARREST IN SAME.

In suits *in personam* the mesne process shall be by a simple monition in the nature of a summons to appear and answer to the suit, or by a simple warrant of arrest of the person of the respondent in the nature of a *capias*, as the libellant may, in his libel or information pray for or elect; in either case with a clause therein to attach his goods and chattels, or credits and effects in the hands of the garnishees named in the libel to the amount sued for, if said respondent shall not be found within the District. But no warrant of arrest of the person of the respondent shall issue unless by special order of the court, on proof of the propriety thereof by affidavit or otherwise.

3.

BAIL—IMPRISONMENT FOR DEBT.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State where an arrest is made on similar or analogous process issuing from the State court.

And imprisonment for debt, on process issuing out of the admiralty court, is abolished, in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, on similar or analogous process issuing from a State court.

4.

BAIL IN SUITS IN PERSONAM.

The marshal shall take from the party arrested, as bail, either sufficient cash or a bond or stipulation in a sufficient sum, with sufficient sureties or an approved corporate surety, to be held by him to secure the appearance of the party so arrested in the suit. And upon such bond or stipulation summary process of execution shall be issued against the principal and sureties or corporate surety by the court to which the process is returnable.

5.

BOND IN ATTACHMENT SUITS IN PERSONAM.

In all suits *in personam*, where goods and chattels, or credits and effects, are attached under a process authorizing the same, the attachment shall be dissolved by order of the court to which the process is returnable, on the giving of a bond or stipulation, with sufficient sureties, or an approved corporate surety, by the respondent whose property is so attached, or by someone on his behalf, conditioned to abide by all orders, interlocutory or final, of the court, and to pay the amount awarded by the final decree of the court to which the process is returnable, or in any appellate court, not exceeding, however, the value of the goods so attached with interest at six per centum per annum and costs; and upon such bond or stipulation, summary process of execution shall be issued against the principal and sureties or surety by the court to which the process is returnable, to enforce the final decree so rendered or on appeal by any appellate court.

6.

BONDS—STIPULATION—HOW GIVEN.

All bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before the clerk or a deputy clerk or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or before any commissioner of the United States authorized by law to take bail and affidavits in civil cases, or otherwise by written agreement of the parties or their proctors of record.

7.

BONDS—PREMIUMS—TAXABLE AS COSTS.

If costs shall be awarded by the Court to either or any party then the reasonable premium or expense paid on all bonds or stipulations or other security given by that party in that suit shall be taxed as part of the costs of that party.

8.

REDUCTION OF BAIL, BOND OR STIPULATION—NEW
SURETIES.

In all suits either *in rem* or *in personam*, where bail is given or a bond or stipulation is taken, the court may, on motion, for due cause shown, reduce the amount of such bail or may reduce the amount of security given by either bond or stipulation; and in all cases, either *in rem* or *in personam*, where a bond or stipulation is given, if either of the sureties or the corporate surety shall be or become insufficient or the security for costs shall for any reason be insufficient pending the suit, new or additional security may be required by order of the court on motion.

9.

MONITION TO THIRD PARTIES IN SUITS IN REM.

In all suits *in rem* against a ship, and/or her appurtenances if her appurtenances or any of them are in the possession or custody of any third person, the court shall, on due notice to such third person and after hearing, decree

that the same be delivered into the custody of the marshal or other proper officer, if on hearing it appears that the same is required by law and justice.

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13.

SEAMEN'S WAGES—MATERIAL-MEN—REMEDIES.

In all suits for mariners' wages or by material-men for supplies or repairs or other necessities, the libellant may proceed *in rem* against the ship and freight and/or *in personam* against any party liable.

14.

PILOTAGE—COLLISION—REMEDIES.

In all suits for pilotage or damage by collision, the libellant may proceed *in rem* against the ship and/or *in personam* against the master and/or the owner.

15.

ASSAULT OR BEATING—REMEDIES.

In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

16.

MARITIME HYPOTHECATION—REMEDIES.

In all suits founded upon a mere maritime hypothecation of ship or freight, either express or implied, by the master for moneys taken up in a foreign port for supplies or repairs or other necessities for the voyage, without any claim of maritime interest, the libellant may proceed *in rem* and/or *in personam* against the master and/or the owners.

17.

BOTTOMRY BONDS—REMEDIES.

In all suits on bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by its own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrongdoer.

18.

SALVAGE—REMEDIES.

In all suits for salvage, the suit may be *in rem* against the property saved, or the proceeds thereof, and/or *in personam* against any party liable for the salvage service.